

Exhibit 2

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 NANCY MUCCIARONE,

6 Plaintiff,

7 -against-

8 INITIATIVE, INC., INTERPUBLIC GROUP, DR
9 PEPPER SNAPPLE GROUP, INC., and JUSTIN
10 WHITEHEAD,

Defendants.

Civil Action No. 1:18-cv-00567 (PKC)

11
12 February 11, 2019
13 9:38 a.m.
14
15

16 DEPOSITION of NANCY MUCCIARONE,
17 taken by Defendants, pursuant to Notice,
18 held at the offices of SEYFARTH SHAW LLP,
19 620 Eighth Avenue, New York, New York
20 before Wayne Hock, a Notary Public of the
21 State of New York.
22
23
24
25

1 N. Mucciarone

2 Q. Other than what you've already
3 said, did you do anything else to get
4 ready for the deposition?

5 A. No.

6 Q. What is your birthday?

7 A. It's August 4, 1989.

8 Q. Where did you grow up?

9 A. In North Reading, Massachusetts.

10 Q. Where do you live currently?

11 A. Brooklyn.

12 Q. How long have you lived there?

13 A. I've lived in Brooklyn for four
14 years or so. I've been in my current
15 condo for two years.

16 Q. What's your current address?

17 A. 764 Metropolitan Avenue,
18 apartment 4A.

19 Do you need the rest of it?

20 Q. No, that's okay.

21 And you said you've lived there
22 for how long?

23 A. Two years in April.

24 Q. Do you and your husband own that
25 residence?

1 N. Mucciarone

2 A. Correct.

3 Q. What company did you work for?

4 A. Initiative.

5 Q. Where did you report to work?

6 A. The address?

7 Q. Yes.

8 A. I don't think I know the address
9 off the top of my head, I'm sorry.

10 Q. Approximately where in the city
11 was it?

12 A. It was in Herald Square in the
13 Manhattan Mall, above the Manhattan Mall.

14 Q. What was your role at
15 Initiative?

16 A. I was an associate director of
17 communications design.

18 Q. Did you hold the same position
19 throughout your time at Initiative?

20 A. So I initially was brought on as
21 a consultant. I worked as a consultant
22 roughly from November of 2016 through
23 February or March of 2017. My role was a
24 supervisor. And then I was asked to come
25 on full time and I was given a promotion

1 N. Mucciarone

2 Q. Who told you that?

3 A. I believe it was Erin Rech.

4 Q. Do you recall any specifics
5 about what Erin told you about working
6 with Dr. Pepper Snapple Group?

7 A. No.

8 Q. Dr. Pepper Snapple Group was a
9 client of Initiative; is that right?

10 A. Correct. But they were a client
11 in the LA office and at the time they were
12 beginning a transition to the New York
13 office.

14 Q. Was there a team assigned to the
15 Dr. Pepper Snapple Group account when you
16 initially became associate director?

17 A. It was the very beginning of a
18 team. Kris Magel, who was the president,
19 was heading up staffing the team. So at
20 that point the New York office had just
21 lost the Molson Coors account so Kris
22 Magel was selecting people from that group
23 to come on and be on Dr. Pepper and, as a
24 result, also selected me and also selected
25 Nick.

1 N. Mucciarone

2 Feather.

3 Q. I'm sorry, say that last name
4 again?

5 A. Brad Feather.

6 There may be more but I'm not
7 sure.

8 Q. Okay.

9 What was the work that --

10 MS. ALMON: Let me strike that.

11 Q. Did this team have a name or a
12 label with Initiative?

13 A. So with all of the people I just
14 named were on different teams within the
15 Dr. Pepper team.

16 Q. Okay.

17 A. So my particular team with Nick
18 Grainger and Sarah Stern, we were the
19 communications design group.

20 Q. So just I want to understand if
21 I have this correct.

22 There's a Dr. Pepper team that
23 then has subteams?

24 A. Correct.

25 Q. Okay.

1 N. Mucciarone

2 And you were on the
3 communications design subteam?

4 A. Correct.

5 Q. Out of the people you just
6 listed, were any of them also on the
7 communications design subteam?

8 A. Aside from Nick and Sarah, at
9 the very beginning, no, it was just the
10 three of us.

11 Q. So the initial communications
12 design team for Dr. Pepper was you, Sarah
13 Parker, and Nick Grainger?

14 A. Sorry, no, Sarah Stern.

15 Q. Let me try that again.

16 The initial communications
17 design team assigned to the Dr. Pepper
18 account was Sarah Stern, Nick Grainger,
19 and you; correct?

20 A. Correct.

21 Q. What were the other subteams?
22 And I'm not asking who was assigned to
23 each one but just wondering what the other
24 ones were called.

25 A. This was a digital partnership

1 N. Mucciarone

2 recollection.

3 A. May or June of that year.

4 Q. And what was Linda Cronin's
5 role?

6 A. She was -- I don't know what her
7 actual title was. She was on a team
8 called client advice but she also I think
9 in theory oversaw all of the groups within
10 the Dr. Pepper team.

11 Q. Could you describe generally the
12 work that you did for the Dr. Pepper
13 account during the time you were an
14 associate director?

15 A. Every day was different. I know
16 that's kind of a cliché thing to say. We
17 handled all of the direct requests from
18 clients. We would kind of field where
19 this would go and who would take over it.
20 We did some competitive things. We
21 handled all of their billing. We handled
22 all of their media plans and generally
23 were a resource for our clients.

24 Q. Did you have direct client
25 contact in your role as associate

1 N. Mucciarone

2 director?

3 A. Yes.

4 Q. Who were your Dr. Pepper client
5 contacts?

6 A. My direct contact was Elizabeth
7 Eaton and occasionally I would have
8 contact with -- why can't I remember his
9 name? Elizabeth Eaton's boss. I'm
10 drawing a blank. Eric Blackwood.

11 Q. How often did you communicate
12 with Elizabeth Eaton?

13 A. At least once a week we would
14 have status phone calls and any time she
15 had any kind of request, she would e-mail
16 me and Nick.

17 Q. Did you e-mail on a near daily
18 basis with Elizabeth Eaton?

19 A. It depended on what was going on
20 at the time. Sometimes multiple times a
21 day, sometimes once a week.

22 Q. Did you speak with Eric
23 Blackwood with that same frequency?

24 A. No, much less frequent.

25 Q. Other than Elizabeth Eaton and

1 N. Mucciarone

2 Eric Blackwood, did you have contact with
3 others at Dr. Pepper?

4 A. Blaise D'Silva.

5 Q. Anyone else?

6 A. No.

7 Q. Under what circumstances did you
8 have communications with Blaise D'Silva?

9 A. That was quite rare. I sent him
10 a few e-mails a few times but it was a
11 rare occurrence. He was Eric Blackwood's
12 boss.

13 Q. Was there anything about your
14 communications with Blaise D'Silva that
15 you thought was inappropriate in any way?

16 A. No.

17 Q. Was there anything about your
18 communications with Eric Blackwood that
19 you thought was inappropriate in any way?

20 A. No.

21 Q. What was your impression of
22 Elizabeth Eaton that you formed through
23 your communications with her?

24 A. I thought she was smart,
25 personable, friendly, and a kind client.

1 N. Mucciarone

2 Q. Would you say that you and
3 Elizabeth had a good working relationship?

4 A. Yes, but it stopped there. Our
5 communications were purely professional.

6 Q. Did you --

7 MS. ALMON: Let me try to phrase
8 it a different way.

9 Q. Did you and Elizabeth Eaton have
10 a positive, professional relationship?

11 A. Yes.

12 Q. And you mentioned that you
13 thought she was kind in her interactions
14 with you?

15 A. I did.

16 Q. Did you feel that Elizabeth
17 Eaton was fair in her interactions with
18 you?

19 A. Yes.

20 Q. Did you have the impression that
21 Elizabeth Eaton was honest in her
22 professional dealings with you?

23 A. Yes.

24 Q. What -- when you first started
25 doing work with Dr. Pepper, your

1 N. Mucciarone

2 impression of Dr. Pepper as a company?

3 A. I thought there was some
4 disorganization but I thought overall they
5 were a good company to work with.

6 Q. What led you to conclude they
7 were a good company to work with?

8 A. All of my interactions with the
9 clients were positive. I've worked on a
10 variety of different brands. I've had a
11 variety of different clients over my
12 career and having a good client is few and
13 far between and I thought overall working
14 with Dr. Pepper was enjoyable.

15 Q. Did you ever have in-person
16 meetings with the client?

17 A. Yes.

18 Q. How frequently did that occur?

19 A. Again, it would depend on what
20 was going on at the time. Maybe a total
21 of four or five times.

22 Q. Where did those in-person
23 meetings take place?

24 A. There was one in Dallas and the
25 rest of them were at Initiative.

1 N. Mucciarone

2 say for sure. There's not one meeting
3 that particularly sticks out in my mind.

4 Q. Okay.

5 At any point between the May
6 meeting in Texas and August 29, 2017, did
7 you have any in-person interactions with
8 Justin Whitehead?

9 A. Not that I can recall.

10 Q. Between May of 2017 and
11 August 29, 2017, did you talk to Justin
12 Whitehead on a telephone?

13 A. Not that I can recall.

14 Q. Prior to August 29, 2017, was
15 there any interaction you had with Justin
16 Whitehead that you thought was
17 inappropriate in any way?

18 A. Not that I can recall.

19 Q. When you spoke with Elizabeth
20 Eaton between May, 2017 and August 29,
21 2017, did you ever discuss Justin
22 Whitehead?

23 A. No.

24 Q. Prior to August 29, 2017, did
25 you have any conversation that you can

1 N. Mucciarone

2 August 29, 2017?

3 A. Did we have the conversation
4 prior to that; is that what you're asking?

5 Q. At any time prior to August 29,
6 2017, did Aggie Haney say anything about
7 Justin Whitehead behaving
8 unprofessionally?

9 A. No.

10 Q. Other than Aggie Haney, did
11 anyone else talk to you about Justin
12 Whitehead at any point prior to August 29,
13 2017?

14 A. Not that I can recall.

15 Q. Do you recall having any kind of
16 written communication about Justin
17 Whitehead prior to August 29, 2017 with
18 anybody else?

19 A. Not that I can recall.

20 Q. Prior to August 29, 2017, did
21 you have any particular impression of
22 Justin Whitehead?

23 A. Not particularly. I met him
24 once or twice and I thought he was nice.

25 Q. There was a meeting between

1 N. Mucciarone

2 Initiative and some Dr. Pepper people in
3 late August, 2017; correct?

4 A. Correct.

5 Q. What was the purpose of that
6 meeting?

7 A. The purpose was a partnership
8 day. The Dr. Pepper clients were flying
9 in to meet with a variety of different
10 media partners, sort of a brainstorm get
11 to know you, get to know our product type
12 of thing.

13 Q. Were the meetings all with
14 Initiative people or other companies as
15 well?

16 A. Other companies as well.

17 Q. Did you have any
18 responsibilities relating to that?

19 A. I was in the meeting but it was
20 purely to listen, take notes.

21 Q. Did you have work that you
22 needed to do to prepare for the
23 partnership day?

24 A. Not that I can recall.

25 (Whereupon, an e-mail dated

1 N. Mucciarone
2 communications design approach to the 2018
3 7Up advertising campaign.

4 Q. When were you scheduled to meet
5 with Elizabeth about that topic?

6 A. After partner day on Tuesday,
7 August 28 -- sorry, twenty-ninth.

8 Q. So how did the partner day
9 meeting structure work? Could you just
10 explain that?

11 A. If I remember correctly, members
12 of the strategy team, so for my team it
13 was Brad Feather, presented his strategy
14 for 7Up, the Dr. Pepper brands, and A&W
15 and Bai, I think, which were also our
16 brands.

17 After that, we would have a big
18 brainstorming conversation about how these
19 different partners such as ESPN or Spotify
20 could help bring these ideas to life. So
21 it was more of a brainstorming session and
22 to get those partners up to speed about
23 what we were thinking about for 2018.

24 Q. And was that scheduled to take
25 up the whole day on August 29, 2017 or

1 N. Mucciarone

2 bleacher seats.

3 Q. Is that an auditorium?

4 A. Smaller than an auditorium, but
5 yes, in Initiative. And my group was in a
6 conference room.

7 Q. Were you divided in that manner
8 for the full partner day?

9 A. Yes.

10 Q. Who was in your conference room?

11 A. It was Elizabeth, Brad Feather,
12 Nick Grainger.

13 For the rest of the Initiative
14 people, I'm not -- I can't recall how it
15 was divided. And then there was one or
16 two representatives from a variety of
17 media companies.

18 Q. Was Anastasia Russ in the
19 conference room with you?

20 A. She was not in our group.

21 Q. Was Justin Whitehead in your
22 group?

23 A. No.

24 Q. Do you remember which media
25 companies were in attendance with you?

1 N. Mucciarone

2 A. The same ones that I had
3 mentioned previously, yeah.

4 Q. So the third-party partners sent
5 representatives to the grandstand and to
6 the conference room?

7 A. Correct.

8 Q. What was your working group in
9 the conference room charged with doing?

10 A. For me personally, listening.

11 Q. Other than Elizabeth Eaton, was
12 any other representative of Dr. Pepper
13 Snapple Group in the conference room
14 working group?

15 A. I don't believe so.

16 Q. Do you remember approximately
17 what time the partner day portion of the
18 day ended?

19 A. It likely was early afternoon.

20 Q. Did you immediately go to the
21 7Up presentation part of your day?

22 A. Yes.

23 Q. Where did that take place?

24 A. In another conference room.

25 Q. Who was in attendance there?

1 N. Mucciarone

2 A. It was Elizabeth Eaton, Nick
3 Grainger, and myself.

4 Q. Was anyone else participating by
5 telephone?

6 A. No.

7 Q. Or videoconference?

8 A. No.

9 Q. Approximately how long did the
10 7Up presentation component of the day
11 last?

12 A. Probably around forty-five
13 minutes.

14 Q. Do you know what time of day
15 roughly that was when that ended?

16 A. Likely early afternoon.

17 Q. Did you have any other
18 interactions with anybody from Dr. Pepper
19 Snapple Group between the time that the
20 7Up meeting ended and when you left
21 Initiative for the day?

22 A. Yes.

23 Q. Who else?

24 A. Elizabeth. Nick, Elizabeth, and
25 I went to lunch.

1 N. Mucciarone

2 Q. Where did you go to lunch?

3 A. The Smith.

4 Q. I believe The Smith has more
5 than one location in the city, so where
6 was this one?

7 A. It was the one closest to
8 Initiative. I believe it's on like 28th
9 or so.

10 Q. Okay.

11 And you went to the restaurant
12 there?

13 A. Yes.

14 Q. And what was the topic of your
15 conversation, if you can recall, at that
16 lunch?

17 A. We talked about work. We talked
18 about what we had just presented to
19 Elizabeth. We talked about the team, the
20 structure of the team. It was pretty
21 professional, I would say.

22 Q. When you say you talked about
23 the team, do you mean the Initiative team
24 or something else?

25 A. The Initiative team.

1 N. Mucciarone

2 Q. Did you raise any concerns with
3 Elizabeth Eaton during that lunch?

4 A. No.

5 Q. Did Nick?

6 A. Not that I can recall.

7 Q. Did you discuss Justin Whitehead
8 at all during that lunch?

9 A. No.

10 Q. Did you discuss Anastasia Russ
11 during that lunch?

12 A. No.

13 Q. Did you drink any alcohol during
14 that lunch?

15 A. Yes.

16 Q. What did you have to drink?

17 A. I had one Aperol spritz.

18 Q. Did the other attendees have
19 anything to drink?

20 A. Yes.

21 Q. What did they have to drink?

22 A. I can't recall.

23 Q. Was -- was Elizabeth Eaton
24 impaired during that lunch, to your
25 knowledge?

1 N. Mucciarone

2 A. I can't say.

3 Q. Was there anything Elizabeth
4 Eaton did during that lunch that led you
5 to believe that she was impaired?

6 A. No.

7 Q. Was there anything that Nick
8 Grainger did during that lunch that led
9 you to believe that he was impaired?

10 A. No.

11 Q. Were you impaired?

12 A. No.

13 Q. Did you return to lunch --

14 MS. ALMON: Sorry, try that
15 again.

16 Q. Did you return to work after
17 lunch?

18 A. Yes.

19 Q. What did you do?

20 A. I can't recall for sure. I
21 believe I checked some e-mails, caught up
22 on a couple of things. And at that point
23 it was pretty close to 5:00 p.m. and the
24 clients were kind of itching to get out of
25 the office.

1 N. Mucciarone

2 Q. Do you remember who paid for the
3 lunch?

4 A. Nick.

5 Q. On Defendant's Exhibit 3,
6 there's reference to a happy hour with
7 Channel Factory, Initiative, and DPSG.

8 Do you see that?

9 A. Yes.

10 Q. What is Channel Factory?

11 A. Channel Factory is a subset of
12 YouTube.

13 Q. Do you know who arranged this
14 happy hour?

15 A. I don't know for sure but it
16 likely was a member of the digital
17 partnerships team.

18 Q. And that's a part of the
19 Initiative team?

20 A. Correct.

21 Q. Was Initiative the sponsor of
22 the happy hour?

23 A. No.

24 Q. Do you know who was?

25 A. Channel Factory.

1 N. Mucciarone

2 A. No.

3 Q. Did Elizabeth Eaton say or do
4 anything unprofessional at the David Chang
5 happy hour?

6 A. No.

7 Q. Other than the David Chang happy
8 hour and the Channel Factory happy hour,
9 did you ever attend another happy hour
10 with Dr. Pepper Snapple Group and your
11 team prior to August 29, 2017?

12 A. Not that I can recall.

13 Q. Did you attend the Channel
14 Factory happy hour?

15 A. Yes.

16 Q. Do you know what time you went
17 to the happy hour?

18 A. I don't.

19 Q. The happy hour started at 5:00
20 p.m., according to this calendar invite;
21 is that right?

22 A. Yes.

23 Q. Were you there roughly around
24 the start time of the happy hour?

25 A. I was a little bit late.

1 N. Mucciarone

2 Q. Do you remember how late?

3 A. Maybe twenty or thirty minutes.
4 I can't say for sure.

5 Q. Is it fair to say you were in
6 attendance for the bulk of the happy hour?

7 A. Yes.

8 Q. Prior to the time you arrived at
9 the Channel Factory happy hour, did you
10 have any interactions with anybody from
11 Dr. Pepper Snapple Group who you haven't
12 already described?

13 A. Yes.

14 Q. Who was that?

15 A. Sorry if I'm misunderstanding
16 your question. It's the same people but
17 we went somewhere else prior to this
18 particular happy hour.

19 Q. So who did you --

20 MS. ALMON: I'll start over.

21 Q. Where did you go prior to
22 Channel Factory?

23 A. It was a bar close by. I don't
24 know the name of it.

25 Q. Was that a formally organized

1 N. Mucciarone

2 event or something more spontaneous?

3 A. It was more spontaneous. The
4 clients were ready to get out of the
5 office, so a smaller group of Initiative
6 employees agreed to take them somewhere
7 prior to this Rock and Reilly's happy
8 hour.

9 Q. You don't know the name of the
10 bar?

11 A. I don't know.

12 Q. Can you describe it?

13 A. It was -- we were in a basement.
14 It was kind of a divey bar. We were there
15 maybe for twenty minutes tops.

16 Q. Who attended the event at the
17 basement bar?

18 A. I actually don't know for sure.
19 I know that Elizabeth, Tas, Anastasia, and
20 Justin Whitehead were there. Nick
21 Grainger was there. And a few are other
22 Initiative employees that are on the DPSG
23 team but I can't say for sure.

24 Q. You said that you were there
25 about twenty minutes in the basement bar?

1 N. Mucciarone

2 A. Give or take, yeah.

3 Q. To your knowledge, is that
4 roughly about the same amount of time the
5 others were in the bar?

6 A. Yes. We came together and we
7 left together.

8 Q. Did you have a drink at that
9 bar?

10 A. I did.

11 Q. To your knowledge, did others
12 have a drink at that bar?

13 A. Yes.

14 Q. Did anyone have more than one
15 drink at that bar?

16 A. Perhaps but I can't say for
17 sure.

18 Q. As you sit here now, do you know
19 of anyone who had more than one drink for
20 certain?

21 A. I don't.

22 Q. While you were at the basement
23 bar, did you have any interactions with
24 Justin Whitehead?

25 A. Yes.

1 N. Mucciarone

2 It wasn't a serious conversation.

3 Q. Did you think there was anything
4 inappropriate about the conversation?

5 A. No.

6 Q. What did Justin say during that
7 conversation?

8 A. I can't recall exactly but he
9 was part of the conversation because he
10 also knows Alex, but it wasn't -- he
11 wasn't a main speaker in the conversation.

12 Q. During the time you were in the
13 basement bar, did Justin say anything that
14 you thought was inappropriate?

15 A. No.

16 Q. During the time you were in the
17 basement bar, did Justin do anything that
18 you thought was inappropriate?

19 A. No.

20 Q. Was it your impression that
21 anyone was impaired due to alcohol during
22 the time you were in the basement bar?

23 A. Do you mind giving me a
24 definition of impaired?

25 Q. I'm asking you based on your

1 N. Mucciarone

2 impression.

3 Did you look at anyone when you
4 were in the basement bar and thought they
5 had too much to drink?

6 A. Too much to drink, no.

7 Q. Did Elizabeth Eaton leave the
8 basement bar for a period of time to take
9 a phone call, to your knowledge?

10 A. Not to my knowledge.

11 Q. Do you know for certain one way
12 or the other whether she left to take a
13 phone call?

14 A. I don't recall that one way or
15 another.

16 Q. After you left the basement bar,
17 did you go directly to the Channel Factory
18 happy hour?

19 A. Yes.

20 Q. And that was at a bar called
21 Rock and Reilly's; correct?

22 A. Yes, correct.

23 Q. When you arrived at Rock and
24 Reilly's?

25 MR. WARSHAWSKY: The Channel

1 N. Mucciarone

2 Rock and Reilly's that struck you as
3 inappropriate?

4 A. Not that I can recall, no.

5 Q. As you were going to Rock and
6 Reilly's, did you have any concerns that
7 Justin Whitehead was going to say or do
8 anything sexually harassing?

9 A. No.

10 Q. To your knowledge, was there any
11 reason that a reasonable person would
12 believe Justin Whitehead was going to
13 harass or assault someone at the Rock and
14 Reilly's happy hour?

15 A. Not to my knowledge.

16 Q. Was there any signs that you saw
17 based on his prior behavior that would
18 lead you to believe he was going to harass
19 or assault someone at Rock and Reilly's?

20 A. No.

21 Q. When you got to Rock and
22 Reilly's, did they have food set out for
23 all of you?

24 A. Yes.

25 Q. Can you describe how that was

1 N. Mucciarone

2 within my immediate range it was Nick on
3 my left side and Justin on my right side.

4 Q. Were you sitting on a banquette?

5 A. Essentially, yes.

6 Q. Okay.

7 So you're sharing the same seat?

8 A. Correct.

9 Q. I see. Okay.

10 And I'm sorry, you said Justin
11 was on your left or right?

12 A. Justin was on my right; Nick was
13 on my left.

14 Q. Do you know roughly how long you
15 had been at the happy hour before you sat
16 down to eat?

17 A. Maybe forty minutes or so.

18 Q. Prior to your sitting down to
19 have something to eat, did you have any
20 interactions with Justin at Rock and
21 Reilly's?

22 A. Yes.

23 Q. What was the first interaction
24 you had with him at Rock and Reilly?

25 A. Immediately when we got there.

1 N. Mucciarone

2 Q. At that point you're standing up
3 talking?

4 A. Correct.

5 Q. Who else was there?

6 A. Nick. I can't say for sure who
7 else was there.

8 Q. So at the outset of the happy
9 hour, Nick Grainger, Justin Whitehead, and
10 you were standing up talking?

11 A. I believe there were other
12 people there but I don't know for sure who
13 was there.

14 Q. Do you know if they worked for
15 Channel Factory?

16 A. No.

17 Q. Do you know if they worked for
18 Initiative?

19 A. Likely, yes.

20 Q. Was Elizabeth Eaton in that
21 initial conversation?

22 A. She was around the general area.
23 We would kind of turn and talk to her, but
24 she wasn't within our immediate circle.

25 Q. Was Anastasia Russ within your

1 N. Mucciarone

2 immediate circle at that point?

3 A. No, she was a similar situation
4 to Elizabeth.

5 Q. What, if anything, do you recall
6 about that initial conversation where
7 you're standing in an immediate circle
8 with Justin Whitehead and Nick Grainger?

9 A. I recall that Justin began
10 getting overly friendly. I kind of
11 figured, you know, he had a couple of
12 drinks, he was loosening up a little bit.
13 I didn't feel that it was anything
14 inappropriate but it was getting into more
15 personal conversation. And I could feel
16 his eyes on me. So even when I was turned
17 and speaking to Nick or even when Nick was
18 speaking to me, I could feel Justin's eyes
19 fixated on me.

20 Q. Do you remember specifically
21 anything he said?

22 A. He -- he asked me a lot about my
23 boyfriend at the time. We spoke about his
24 wife and how they potentially wanted to
25 have children. We talked about vacations.

1 N. Mucciarone

2 He and his wife were talking about
3 planning a trip to Italy and I was giving
4 some recommendations because my boyfriend
5 and I had come back from there recently.

6 Q. Your boyfriend at the time is
7 your current husband?

8 A. Correct.

9 Q. And you said during that initial
10 conversation, although the conversations
11 were more personal in nature, you didn't
12 think they crossed the line into being
13 inappropriate?

14 A. No, I thought it was -- a happy
15 hour like that in our industry is to get
16 to know, form better relationships with
17 your clients and that's what I felt was
18 going on.

19 Q. You said you felt his eyes on
20 you.

21 What do you mean by that?

22 A. Even when I wasn't the one
23 speaking, I could see that his head was
24 turned toward me the whole time.

25 Q. Did you think that was

1 N. Mucciarone

2 A. Yes. But as I said, you know,
3 it wasn't just the three of us. We would
4 kind of turn around and talk to Elizabeth
5 or talk to whoever else was around.

6 Q. So that conversation would kind
7 of come and go depending on other people
8 entering into the dialogue?

9 A. Correct.

10 Q. So you went and sat down at the
11 table to have some food; correct?

12 A. Correct.

13 Q. When you sat down, what
14 conversation, if any, did you have?

15 A. At that point the conversation
16 with Justin turned extremely
17 inappropriate. He started complimenting
18 me in a way that I felt was extremely
19 inappropriate for A, a work situation and
20 B, a situation where I just described a
21 wonderful trip that I got back from with
22 my boyfriend at the time. I made it very
23 clear that I was in a happy relationship
24 and I was not looking for anything else.
25 That continued for maybe twenty or so

1 N. Mucciarone

2 minutes.

3 Then he started putting his hand
4 on my leg. He started saying that he
5 likes me so much. He thinks that I'm so
6 beautiful, so pretty, like I wish I could
7 be with a girl like you. And I would turn
8 to Nick on my left and say are you hearing
9 this and Nick would say yeah, like this is
10 kind of crazy, like just go with it, it's
11 fine.

12 Q. So going back to when you're
13 sitting down but before Justin touches
14 your leg, you said that lasted about
15 twenty minutes?

16 A. Yes.

17 Q. During that twenty minutes, what
18 specific words did Justin Whitehead use,
19 to the best you can recall?

20 A. You're so beautiful; I wish I
21 could be with someone like you. Those are
22 the main ones that I recall.

23 Q. And Nick Grainger was on the
24 other side of you; correct?

25 A. Correct.

1 N. Mucciarone

2 Q. And at this point is the happy
3 hour still relatively crowded?

4 A. Yes.

5 Q. What was the noise level?

6 A. I would say it was loud.

7 Q. Rock and Reilly's a pretty big
8 open space; right?

9 A. Correct.

10 Q. Was the room itself fairly loud?

11 A. Yes.

12 Q. To your knowledge, could anyone
13 else besides potentially Nick Grainger
14 hear that conversation occurring at that
15 moment?

16 A. Not to my knowledge, no.

17 Q. What did you say in response to
18 Justin Whitehead's compliments?

19 A. Frankly, I felt uncomfortable
20 and I didn't know how to handle the
21 situation. You know, we're in client
22 services so it's a fine line sometimes.

23 I wouldn't say I was blowing him
24 off but I wouldn't say that I was
25 encouraging his behavior. I don't

1 N. Mucciarone

2 remember exactly what I said but knowing
3 myself in a situation like that, what I
4 normally do is uncomfortably laugh and
5 kind of leave it at that.

6 Q. You mentioned knowing what you
7 do in a situation like that.

8 Has something like that occurred
9 to you previously?

10 A. Maybe personally, but that's in
11 a situation where you do feel comfortable
12 blowing someone off. I think this was a
13 fine line that I didn't necessarily know.

14 Q. So in other situations you'd be
15 referring to when you were in a social
16 setting and someone was making overtures
17 to you?

18 A. Correct.

19 Q. When Justin Whitehead put his
20 hand on your leg, can you be specific
21 about what he did?

22 A. He put his hand on my upper
23 thigh.

24 Q. Did he rest it there or --

25 A. Rested it.

1 N. Mucciarone

2 Q. What did you do?

3 A. I kind of like gave a look and
4 pushed it off.

5 Q. Did he try to put his hand on
6 your leg again?

7 A. Yes.

8 Q. What did you do the next time it
9 happened?

10 A. The same thing.

11 Q. How many times did that occur?

12 A. Twice.

13 Q. You mentioned that you said
14 something to Nick Grainger.

15 At what point did you say
16 something to Nick about observing what's
17 going on?

18 A. It was the beginning when he
19 started making comments about my
20 appearance.

21 Q. And what was Nick's response?

22 A. Just go with it.

23 Q. What did you understand him to
24 mean by that?

25 A. Justin's a client. As I said,

1 N. Mucciarone

2 Q. After you've pushed Justin
3 Whitehead's hand off your leg for the
4 second time, what happens next?

5 A. I said aren't you married.

6 Q. What did he say?

7 A. He said my wife and I have an
8 open relationship and I have a hotel room
9 in New York tonight.

10 Q. What did you say to that?

11 A. I have a boyfriend and I'm
12 happy.

13 Q. What happened next?

14 A. I think at that point I got up
15 and I went to use the bathroom. I called
16 my boyfriend at the time Andrew and I told
17 him what was going on and he suggested
18 that I leave.

19 Q. When you got up to go to the
20 restroom, do you remember if -- you had
21 Justin on one side and Nick on the other
22 side; correct?

23 A. Yes.

24 Q. Do you remember which way you
25 went out?

1 N. Mucciarone

2 A. To the left, toward Nick.

3 Q. So Nick had to get up for you to
4 get out?

5 A. There was room for me to just
6 kind of just slide through.

7 Q. Okay.

8 So you were able to stand up and
9 walk in between the table and the
10 banquette to get out?

11 A. Correct.

12 Q. When you went to the bathroom to
13 call your now husband, did anyone else
14 join you in the restroom?

15 A. Not at that time, no.

16 Q. When your boyfriend at the time
17 suggested that you leave, what was your
18 response to him?

19 A. I expressed that I didn't feel
20 comfortable leaving. Given that our
21 clients are from Texas, there's not a lot
22 of opportunity to bond with them or get to
23 know them or forge new relationships. I
24 also expressed that all of the other
25 people from Initiative were still there,

1 N. Mucciarone

2 mainly Linda who was the head of our team,
3 Nick who was my direct boss, and a variety
4 of other directors and associate
5 directors.

6 Q. What else, if anything, did your
7 now husband say to you on that call?

8 A. Nothing else that I can recall.

9 Q. Is there anything else you
10 recall that you said during that phone
11 conversation?

12 A. No, there's not.

13 Q. And you said that was in the
14 ladies' room?

15 A. Correct.

16 Q. Was there anyone else present in
17 the ladies' room who you knew?

18 A. Perhaps but I was in a stall so
19 I was by myself.

20 Q. Was there anybody else who was a
21 party to the conversation?

22 A. No.

23 Q. When you left the ladies' room,
24 what happened next?

25 A. At that point I came out of the

1 N. Mucciarone

2 ladies' room and Nick was no longer
3 sitting down. Justin, I don't know where
4 he had gone. But Nick and I started
5 talking. Elizabeth was there. Tas was
6 there. There was a few other Initiative
7 people that were there. We were kind of
8 just having a normal conversation about
9 something.

10 Q. Were you back at that seating
11 area or somewhere else?

12 A. At that point we had stood up in
13 the more open area.

14 Q. Were there other people in the
15 same vicinity as well?

16 A. Likely but I don't recall
17 specifics.

18 Q. Okay.

19 So Nick, Tas, Elizabeth, and you
20 are standing up having a conversation?

21 A. Uh-huh.

22 Q. Sorry, you have to say yes or
23 no.

24 A. I'm sorry, yes.

25 Q. The happy hour is still fairly

1 N. Mucciarone

2 crowded?

3 A. Yes.

4 Q. Is it still loud?

5 A. Yes.

6 Q. Do you remember anything about
7 that discussion that you characterized as
8 a normal conversation?

9 A. No.

10 Q. Did you discuss Justin's conduct
11 during that conversation?

12 A. Not at that time, no.

13 Q. Do you know roughly how long
14 that conversation went on?

15 A. Ten or fifteen minutes.

16 Q. Do you know what time it was?

17 A. I don't.

18 Q. How does that conversation come
19 to an end?

20 A. Justin comes up behind me and
21 puts his arm around my waist.

22 Q. Was he standing on the side of
23 you with his arm around your waist?

24 A. Correct.

25 Q. Could you just describe, since

1 N. Mucciarone

2 we have a videographer, sort of
3 demonstrate how he put his arm?

4 A. Like this, yeah (indicating).

5 Q. What, if anything, did he say
6 when you did that?

7 A. I don't recall. The thing that
8 sticks out in my mind is the waist grab.

9 Q. What specific part of your body
10 was he touching with his hand?

11 A. My hip.

12 Q. And did he say anything to you
13 as he approached?

14 A. Perhaps but I don't -- I don't
15 recall. I was focused on the hand
16 placement.

17 Q. What, if anything, did you say
18 to him?

19 A. I don't recall. I just -- I
20 know that I moved away so that I was no
21 longer in that situation.

22 Q. Did you move so that someone
23 else was in between you and Justin?

24 A. I don't recall.

25 Q. What, if anything, did the other

1 N. Mucciarone

2 people who were present say or do at that
3 point?

4 A. At that point the conversation
5 sort of broke up and it was me, Elizabeth,
6 and Tas having a conversation. I believe
7 Nick poked in for a moment and talked a
8 little bit, but it was mainly the three of
9 us.

10 Q. Okay.

11 So after Justin came up and put
12 his arm around you, you moved your body
13 away from that?

14 A. Yes.

15 Q. Approximately how long was his
16 arm around your waist?

17 A. Three seconds.

18 Q. Was it on top of your clothes?

19 A. Yes.

20 Q. Did you and Elizabeth and Tas
21 move away from Justin and Nick?

22 A. Yes.

23 Q. Where did you go?

24 A. Five feet away, yeah.

25 Q. Did he Justin try to follow you

1 N. Mucciarone

2 as you moved away?

3 A. Not that I can recall. I think
4 he was distracted by talking to Nick.

5 Q. What, if anything, do you recall
6 about the conversation that you had with
7 Elizabeth and Tas at that time?

8 A. I filled them in on what had
9 been happening the entire night.

10 Q. What did you say specifically?

11 A. I recounted the conversation
12 that Justin and I had when we were sitting
13 down. I pointed out the waist grab that
14 they had just seen. And I -- we had a
15 longer conversation about the open
16 marriage that he had brought up.

17 Q. When you say you had a longer
18 conversation about the open marriage, do
19 you mean you talked about his comment or
20 the concept in general or something else?

21 A. The comment. Elizabeth and Tas
22 both said that that wasn't true.

23 Q. That it was not true that he had
24 an open marriage?

25 A. Correct.

1 N. Mucciarone

2 Q. Is there anything else you
3 recall about that conversation, that
4 specific conversation between you and
5 Elizabeth and Tas immediately following
6 the arm around the waist incident?

7 A. I had told them that my
8 boyfriend wanted me to come home.

9 Q. What did they say to that, if
10 anything?

11 A. Don't come home; we want to hang
12 out with you; we never see you; we'll take
13 care of it; Justin's harmless; he's just
14 being gross tonight.

15 Q. What happened after that
16 conversation ends?

17 A. Justin wouldn't leave my side
18 after that. Everywhere I went he would
19 be. He continued the compliments and the
20 conversations about how much he liked me
21 and he mentioned one more time the thing
22 about his hotel room. So that went on for
23 I would say the majority of the rest of
24 our time at Rock and Reilly's.

25 Q. Do you know what time the happy

1 N. Mucciarone

2 event for Channel Factory?

3 A. I believe the main person was
4 Philip Vonthron that's on this invite.

5 Q. To your knowledge, did he stay
6 the whole time?

7 A. Yes.

8 Q. Do you know Philip?

9 A. That was the first night I had
10 met him.

11 Q. Did you have any conversations
12 with him about Justin Whitehead's conduct?

13 A. No.

14 Q. Do you know if he observed it?

15 A. I don't know for sure.

16 Q. You said he was there until the
17 end of the evening?

18 A. Correct.

19 Q. During the time that Justin
20 returned repeatedly to you after your
21 conversation with Tas and Elizabeth, did
22 he touch you again?

23 A. Yes.

24 Q. What happened?

25 A. He would just periodically put

1 N. Mucciarone

2 his hand on my lower back.

3 Q. Did he do that on top of your
4 clothes?

5 A. Yes.

6 Q. What did you do when he touched
7 your lower back?

8 A. The same thing, moved away.

9 Q. Did you say anything further to
10 anyone from Dr. Pepper Snapple Group about
11 Justin while you were still at Rock and
12 Reilly's?

13 A. Yes.

14 Q. What did you say?

15 MS. ALMON: Well, let me back up.

16 Q. With whom did you have a
17 conversation?

18 A. Elizabeth and Tas.

19 Q. And what did you say to them?

20 A. It was -- they would observe his
21 behavior and we would kind of make eyes at
22 each other.

23 Do you know what I mean?

24 At one point I went in the
25 bathroom, in the ladies' room again.

1 N. Mucciarone

2 Elizabeth and Tas came with me, because I
3 told them that my boyfriend had wanted me
4 to come home and they had said stay out.
5 I went in the bathroom and I called him
6 and I talked to him and I said I'm still
7 out, Nick is still here, Elizabeth is
8 still here, they want us to stay out, and
9 then at that point Elizabeth took the
10 phone and spoke with my now husband.

11 Q. Could you hear her side of that
12 conversation?

13 A. Yes.

14 Q. What did you hear her say?

15 A. She said he's harmless; we'll
16 take care of her; we want to hang out with
17 letter. Like she's fine, don't worry
18 about it.

19 Q. Could you hear your husband's
20 side of the conversation?

21 A. No.

22 Q. Did he ever tell you later what
23 he said back to her?

24 A. Actually, no.

25 Q. Were you communicating with your

1 N. Mucciarone

2 husband by text that night as well?

3 A. Yes.

4 (Whereupon, a two-page document
5 was marked Defendant's Exhibit 4
6 for identification.)

7 Q. You have in front of you a
8 document marked as Defendant's Exhibit 4
9 bearing Mucciarone Bates number 325
10 and 326.

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. Do you recognize this?

15 A. I do.

16 Q. What is this?

17 A. This is a text message
18 conversation between me and my now
19 husband.

20 Q. Some of the text is in a colored
21 bubble and some of it is in what's
22 probably a white bubble?

23 A. Correct.

24 Q. Can you identify the colored
25 bubble as your husband's side of the

1 N. Mucciarone

2 exchange?

3 A. Yes.

4 Q. That's on the right-hand side of
5 the document?

6 A. Yes.

7 Q. And on the left-hand side of the
8 document, those comments are from you?

9 A. Yes.

10 Q. It shows that this text exchange
11 is starting at 10:40 p.m.; is that
12 correct?

13 A. Yes.

14 Q. And that's on August 29, 2017?

15 A. Correct.

16 Q. So that's at the time when you
17 were at Rock and Reilly's; is that right?

18 A. I believe so.

19 Q. Or would you have already left
20 that event? Do you know?

21 A. I don't know for sure. It look
22 like was between the time when we were
23 there and deciding where we were going
24 next.

25 Q. So in the second text bubble

1 N. Mucciarone

2 your husband writes, "I was about to text
3 Nick to go over and hang out with you but
4 I keep stopping because I don't want you
5 to get mad and don't know what to do."

6 Do you see that?

7 A. Yes.

8 Q. And then you respond, "okay. He
9 left."

10 A. Uh-huh. Yes.

11 Q. When you say, "he left," who
12 were you referring to?

13 A. Justin.

14 Q. Justin left the Rock and Reilly
15 happy hour?

16 A. By that I meant he left my side.

17 Q. Okay.

18 So at the time you're having
19 this text exchange with your husband at
20 10:40 p.m., Justin had, at least for the
21 time being, left you alone?

22 A. Yes.

23 Q. And this continues on to a
24 second page the same evening but now it's
25 August 30; correct?

1 N. Mucciarone

2 A. That same evening, yes.

3 Q. At 12:15 a.m.?

4 A. Correct.

5 Q. And Kev, that's your dog?

6 A. Correct.

7 Q. And at the point that you're
8 having the exchange that happens at 12:15
9 a.m., at that point you're no longer at
10 Rock and Reilly's, is that right, or you
11 are?

12 A. I believe, yeah, we are.

13 Q. Okay.

14 You state in response to your
15 husband's comment, "hi lady, we tried to
16 stay up but can't keep our eyes open," you
17 respond, "go to sleep, Elizabeth is still
18 out with us;" is that right?

19 A. Correct.

20 Q. Does that refresh your
21 recollection of whether you're still at
22 Rock and Reilly's?

23 A. It does. At this point we are
24 still at Rock and Reilly's.

25 Q. And do you know that because

1 N. Mucciarone

2 Elizabeth went home after Rock and
3 Reilly's?

4 A. Yes. Elizabeth walked to the
5 next bar with us, was going to come in and
6 decided, when we got there, she was not
7 coming in.

8 Q. And when I said go home, I
9 should be more clear, did Elizabeth go
10 back to her hotel room?

11 A. I assume so, yes.

12 Q. To your knowledge?

13 A. To my knowledge.

14 Q. Because home is in Texas; right?

15 A. Correct.

16 MS. ALMON: Okay.

17 You can set that aside.

18 Q. So based on looking at
19 Defendant's Exhibit 4, does that refresh
20 your recollection that the Rock and Reilly
21 happy hour went until at least a little
22 bit after 12:00?

23 A. I don't know if officially it
24 did. Clearly the tab got cut off at some
25 point. I wasn't drinking anymore at that

1 N. Mucciarone

2 point here so I would say it was an
3 unofficial happy hour at that point.

4 Q. A group of Initiative, DPSG, and
5 perhaps other people stayed at Rock and
6 Reilly until 12:15 on August 30?

7 A. Correct.

8 Q. Other than what you've
9 described, did anything else happen at
10 Rock and Reilly's between you and Justin
11 Whitehead?

12 A. It was more of the same. Other
13 than what I've described, there was
14 nothing else additional, but the behavior
15 continued throughout the night.

16 Q. What, if anything, did you say
17 to anyone at Initiative about what was
18 happening with Justin Whitehead?

19 A. I really only talked to Nick
20 about it and it was more of the same
21 conversation; how weird is this, what is
22 he doing, he's so drunk, get him away from
23 me, things of that nature.

24 Q. It was your impression that Nick
25 Grainger was trying to divert Justin

1 N. Mucciarone

2 Whitehead away from you?

3 A. Yes.

4 Q. Did Elizabeth Eaton try to
5 divert Justin Whitehead away from you?

6 A. Yes.

7 Q. And did Anastasia Russ try to
8 divert Justin Whitehead away from you?

9 A. Not that I can recall.

10 Q. Did anyone from Initiative in
11 any way try to encourage what Justin
12 Whitehead was doing?

13 A. No.

14 Q. Did Elizabeth Eaton in any way
15 try to encourage what Justin Whitehead was
16 doing?

17 A. No.

18 Q. Did Anastasia Russ try to
19 encourage what Justin Whitehead was doing?

20 A. No.

21 Q. Did Elizabeth Eaton suggest that
22 what Justin Whitehead was doing was
23 acceptable to her?

24 A. No, I wouldn't say acceptable.

25 Q. Did Anastasia Russ suggest to

1 N. Mucciarone

2 you that she thought the way Justin
3 Whitehead was behaving was acceptable?

4 A. No.

5 Q. Did Nick Grainger suggest that
6 he thought Justin Whitehead's behavior was
7 acceptable?

8 A. No.

9 Q. You had mentioned that you had
10 some other contacts at Dr. Pepper Snapple
11 Group with whom you interacted from time
12 to time, including Eric Blackwood and
13 Blaise D'Silva.

14 Were they present at this happy
15 hour?

16 A. No.

17 Q. Was there anyone else from Dr.
18 Pepper Snapple Group present at the
19 Channel Factory happy hour?

20 A. No.

21 Q. During the time you were at Rock
22 and Reilly, did you reach out to anyone
23 who was not present besides your husband?

24 A. No.

25 Q. So at some point you leave Rock

1 N. Mucciarone

2 and Reilly; correct?

3 A. Correct.

4 Q. When you left, who left at the
5 same time?

6 A. It was Elizabeth, Tas, Justin,
7 myself, Nick, Tim Buckland, and Philip
8 Vonthron from Channel Factory.

9 Q. And remind me, Tim Buckland's
10 role was what at Initiative?

11 A. He's the associate director of
12 the video partnerships team.

13 Q. When you left, was there any
14 discussion about what was going to happen
15 next?

16 A. We left and we all decided we
17 would go to another bar nearby.

18 Q. Do you know who raised that
19 idea?

20 A. I don't.

21 Q. Did you consider going home at
22 that point?

23 A. I didn't mainly because we were
24 still out with Elizabeth and I was still
25 out with my boss.

1 N. Mucciarone

2 Q. Had Anastasia Russ planned to go
3 to the next bar as well?

4 A. I believe so.

5 Q. The next bar was what?

6 A. The Pig 'N' Whistle.

7 Q. You mentioned earlier that
8 Elizabeth Eaton walked to the Pig 'N'
9 Whistle with you but didn't go in; right?

10 A. Correct.

11 Q. Did you all walk between Rock
12 and Reilly's and the Pig 'N' Whistle?

13 A. Correct.

14 Q. About how far is that?

15 A. A couple of blocks.

16 Q. Did everyone in the group you
17 just described walk together?

18 A. Yes.

19 Q. Did anything that you considered
20 unusual happen on the walk between Rock
21 and Reilly's and Pig 'N' Whistle?

22 A. No.

23 Q. At what point did Elizabeth tell
24 you that she wasn't going to go into the
25 Pig 'N' Whistle?

1 N. Mucciarone

2 A. When we were standing outside.

3 Q. Did she explain why she wasn't
4 going to go in?

5 A. She had an early flight in the
6 morning and wanted to go back to her
7 hotel.

8 Q. Did Anastasia Russ also decide
9 not to go into the Pig 'N' Whistle?

10 A. Yes.

11 Q. Did she walk to the bar as well?

12 A. Yes.

13 Q. Did she give an explanation as
14 to why she was going to leave?

15 A. It was the same explanation as
16 Elizabeth.

17 Q. Given that Elizabeth Eaton and
18 Anastasia Russ said that they were going
19 home after all, did that make you
20 reconsider staying at the Pig 'N' Whistle?

21 A. So at that point Justin had also
22 said he wasn't coming, so no, I was
23 planning on staying out with Nick. We had
24 had a pretty rough two weeks and wanted to
25 hang out and have a fun night.

1 N. Mucciarone

2 Q. How do you know that?

3 A. Because they watched him do it.

4 Q. At the time he walked into the
5 Pig 'N' Whistle, were you concerned that
6 he was going to do something inappropriate
7 to you?

8 A. Yes.

9 Q. What was your concern about what
10 he was going to do?

11 A. It was the same. I figured that
12 the same behavior that had been occurring
13 all night was going to continue to occur.

14 Q. When you saw that he was going
15 into the Pig 'N' Whistle after all, did
16 you consider leaving?

17 A. I didn't mainly because, as I
18 mentioned, I was out with my boss and
19 again, Justin is still a client. If he
20 wants to go out, unfortunately the way
21 that the industry works the assumption is
22 you entertain your clients.

23 Q. When you say the way the
24 industry works, what do you mean by that?

25 A. A large portion of media is

1 N. Mucciarone
2 entertaining your clients and keeping your
3 clients happy. It's a client service
4 industry.

5 Q. Did you believe that the fact
6 that Nick Grainger was present would
7 prevent Justin Whitehead from doing
8 anything more extreme than what he had
9 already done?

10 A. Yes.

11 Q. Do you think it was reasonable
12 to believe that because Nick Grainger was
13 there, Justin Whitehead would not do
14 anything worse than what he had already
15 done?

16 A. Yes.

17 Q. Do you believe it was reasonable
18 for Elizabeth Eaton to draw that same
19 conclusion?

20 A. I guess. I can't -- I can't get
21 into her head but yes, I guess.

22 Q. Do you believe it was reasonable
23 for Anastasia Russ to draw that same
24 conclusion?

25 A. Yes.

1 N. Mucciarone

2 A F T E R N O O N S E S S I O N

3 February 11, 2019

4 1:16 p.m.

5 THE VIDEOGRAPHER: The time is
6 1:16 p.m. and this begins media unit
7 number three.

8 N A N C Y M U C C I A R O N E, having
9 been previously duly sworn by a
10 Notary Public of the State of
11 New York, upon being examined,
12 testified as follows:

13 EXAMINATION CONTINUED BY

14 MS. ALMON:

15 Q. Good afternoon.

16 I think I forgot to ask you
17 earlier, Justin Whitehead's job title was
18 marketing media manager; is that right?

19 A. I believe so. If it's not that
20 exact title it's something along those
21 lines.

22 Q. Justin Whitehead had the same
23 job tight as Elizabeth Eaton?

24 A. As far as I know, yes.

25 Q. Do you know what Anastasia Russ'

1 N. Mucciarone

2 title is?

3 A. I believe it was the same as the
4 other two. They just -- just for
5 clarification, they each covered different
6 brands.

7 Q. Okay.

8 We were talking about Elizabeth
9 Eaton and Anastasia Russ leaving before
10 anyone entered the Pig 'N' Whistle; right?

11 A. Correct, yes.

12 Q. Did they leave together in the
13 same Uber?

14 A. I'm not aware if they took an
15 Uber. I do know they left together.

16 Q. So at the time they left, it was
17 together, regardless of what the mode of
18 transportation was?

19 A. Correct, yes.

20 Q. Did you have an Uber account
21 that you used at that time?

22 A. Yes.

23 Q. Was your Uber account a
24 combination of travel that you did for
25 business and personal or did you separate

1 N. Mucciarone

2 submitted any expenses for reimbursement
3 for August 29 or August 30, 2017?

4 A. I know I submitted a cab receipt
5 for that night.

6 Q. Was that cab receipt for your
7 transportation home?

8 A. Yes.

9 Q. Do you know what time you went
10 home that night?

11 A. Late. It was around 4:30.

12 Q. Was it a yellow cab?

13 A. Yes.

14 Q. Did you go anywhere other than
15 Pig 'N' Whistle after Rock and Reilly and
16 home?

17 A. No.

18 Q. Did you end up paying for any of
19 the food or drinks that evening?

20 A. I don't believe so.

21 Q. Do you know whether all the
22 drinks at Pig 'N' Whistle were put on one
23 tab or --

24 A. I don't know. I'm not sure.

25 Q. Did you pay for any drinks that

1 N. Mucciarone

2 there was a small table close by.

3 Q. Had you been in the Pig 'N'
4 Whistle prior to that time?

5 A. No.

6 Q. Did you know the bartender?

7 A. No.

8 Q. So you had described earlier the
9 group that walked over to the Pig 'N'
10 Whistle, but who actually went into the
11 Pig 'N' Whistle?

12 A. That was Justin, myself, Nick,
13 Tim Buckland, and Philip, who was the
14 person from Channel Factory.

15 Q. Have you talked to Philip since
16 that evening?

17 A. No.

18 Q. Have you had any communication
19 with him?

20 A. No.

21 Q. Roughly what time was it when
22 you went into Pig 'N' Whistle?

23 A. So it was after 12:15, I know
24 that. Likely closer to 12:45 or 1:00, I
25 would say. It was late.

1 N. Mucciarone

2 Q. Prior to going into Pig 'N'
3 Whistle, do you recall how many drinks you
4 had had?

5 A. Over the course I'm going to say
6 day because I did have a drink at lunch,
7 probably like five or six.

8 Q. Do you have any idea how many
9 drinks Nick Grainger had?

10 A. No, I have no idea.

11 Q. Do you have any idea how many
12 drinks Justin Whitehead had?

13 A. No idea.

14 Q. Any idea how many drinks Tim
15 Buckland had?

16 A. I don't know.

17 Q. Do you have any idea of how many
18 drinks Philip Vonthron had?

19 A. No.

20 Q. What happened first when you
21 went into the Pig 'N' Whistle?

22 A. We went up to the bar and Nick
23 ordered drinks for everybody.

24 There was a moment when myself,
25 Nick, and Justin were all standing at the

1 N. Mucciarone

2 bar together and Nick sort of scolded
3 Justin in a way, said, you know, you're
4 really inappropriate, that wasn't cool,
5 you know, kind of like do you know what
6 I've been doing all night. I can't
7 remember if these are Nick's words that
8 I'm taking or if these are my words but I
9 recall him having a sobering moment, sort
10 of oh, my God, I didn't realize that it
11 was really bad, I'm so sorry, and his
12 behavior sort of instantly changed. And
13 at that moment I felt a little bit more
14 comfortable. It was almost like he had
15 realized that he had done the whole night
16 and I felt as if it wouldn't continue.

17 Q. So I just want to make sure I'm
18 following. I think I am.

19 So Nick and you and Justin are
20 at the bar in the Pig 'N' Whistle and Nick
21 reprimanded Justin for his prior behavior?

22 A. Yes.

23 Q. And in response to that, Justin
24 apologized?

25 A. Yes.

1 N. Mucciarone

2 Q. And as a result of that, did you
3 believe that Justin's bad behavior was
4 going to stop?

5 A. I did.

6 Q. Did it stop for any period of
7 time?

8 A. It did.

9 Q. Did you continue to talk to
10 Justin after that?

11 A. Not one-on-one but it was a
12 smaller group, so we were all talking
13 together.

14 Q. And while you were at the Pig
15 'N' Whistle inside the bar, did Justin
16 behave appropriately from that point
17 forward?

18 A. I would say so, yes. Again, we
19 had been drinking so it was -- I would say
20 he was a little bit loose but so was
21 everybody else. His behavior was
22 different from when he's in an office.
23 But I didn't think that given the
24 circumstances he was behaving
25 inappropriately.

1 N. Mucciarone

2 Q. So while you were inside the Pig
3 'N' Whistle, would you describe any of
4 Justin Whitehead's behavior as sexual
5 harassment?

6 A. Within the bar, no.

7 Q. At any point while you were
8 inside the Pig 'N' Whistle, did Justin
9 touch you?

10 A. Not that I can recall, no.

11 Q. Did at any point when you were
12 inside the Pig 'N' Whistle, did Justin
13 touch you inappropriately?

14 A. I don't believe so, no.

15 Q. Did you have any further
16 conversation while inside the Pig 'N'
17 Whistle about how Justin had previously
18 been acting?

19 A. No.

20 Q. Do you remember what you were
21 drinking that night?

22 A. I had -- as I said, I had the
23 Aperol spritz and then at the next bar I
24 had a glass of wine but I didn't finish
25 it. Rock and Reilly's I had wine. And

1 N. Mucciarone

2 then Nick had ordered me like a Bud Light
3 or some sort of light beer at the Pig 'N'
4 Whistle.

5 Q. While at the Pig 'N' Whistle, do
6 you have any idea how many drinks Justin
7 had?

8 A. I don't know.

9 Q. Do you know how many drinks
10 anybody else had during the time you were
11 at the Pig 'N' Whistle?

12 A. I don't know.

13 Q. Do you remember how many drinks
14 you had?

15 A. One, maybe one or two. If it
16 was two, I likely didn't finish it.

17 Q. How did the night at the Pig 'N'
18 Whistle come to an end?

19 A. So at a certain point Justin
20 said that he had to get back to his hotel,
21 he had an early flight. He said good-bye
22 to everyone. He asked me to point him in
23 the direction of his hotel. I walked
24 outside with him and tried to show him
25 where to go, at which point the sexual

1 N. Mucciarone

2 assault occurred.

3 After that, I went back inside,
4 sort of in shock, hung out for a long
5 time. Nick left at one point, Philip left
6 at one point, and the night ended with Tim
7 and I leaving together.

8 Q. Do you know approximately what
9 time it was when Justin said I have to
10 leave and made to leave the bar?

11 A. I don't know.

12 Q. Do you know roughly how long you
13 had been at the Pig 'N' Whistle at that
14 point?

15 A. Probably about an hour.

16 Q. And do you recall where he was
17 going, what hotel?

18 A. I don't recall.

19 Q. Did you plan to leave at the
20 same time as him?

21 A. No.

22 Q. What was the reason you were
23 walking out with him?

24 A. He had asked me to show him how
25 to get to his hotel, what direction he

1 N. Mucciarone

2 should be walking.

3 Q. Okay.

4 Just to basically point him in
5 that direction?

6 A. Correct.

7 Q. Did you plan to walk with him
8 towards his hotel?

9 A. No.

10 Q. Did he ask you to point him in
11 the right direction?

12 A. Yes.

13 Q. At that point were you concerned
14 that, by walking outside with him, you
15 were putting yourself at any kind of risk?

16 A. At the time, no.

17 Q. And did you feel comfortable
18 doing that because he had apologized and
19 behaved appropriately since the point when
20 he apologized?

21 A. Yes.

22 Q. Do you think it was reasonable
23 to believe that, following the apology,
24 Justin Whitehead understood what he had
25 been doing and was not going to misbehave

1 N. Mucciarone

2 again?

3 A. I think so, yes.

4 Q. Did you express any concern to
5 any of the other people at the bar about
6 walking outside with Justin Whitehead?

7 A. No.

8 Q. When you left the bar, how far
9 outside the bar did you get?

10 A. We walked out and we turned the
11 corner -- sorry, turned onto the sidewalk
12 of the bar probably like fifteen feet max.

13 Q. Do you remember whether you
14 turned right or left when you walked out?

15 A. I believe it was right.

16 Q. On the way out of the bar, did
17 Justin say anything to you or did you say
18 anything to him?

19 A. Not that I can recall.

20 Q. So what happened when you got
21 onto the sidewalk?

22 A. It happened so fast I frankly
23 can't even remember how it happened. All
24 of a sudden he had his hand down my shirt
25 touching my boobs, he had his other hand

1 N. Mucciarone

2 on my butt like pulling me closer to him
3 and his head was on the side of my neck
4 trying to kiss my neck and my hands were
5 out like this trying to push him off of me
6 (indicating).

7 Q. Were you successful in pushing
8 him off you?

9 A. I would say I was successful in
10 not allowing his touch to touch my skin.
11 I wasn't successful at getting his hands
12 off of me, no.

13 Q. How long were his hands on you
14 before you were able to get him away from
15 you?

16 A. Honestly I can't say. It felt
17 like five minutes but I doubt it was that
18 long.

19 Q. What were you saying to him as
20 this happened?

21 A. No, get off of me, things of
22 that nature.

23 Q. Do you remember him saying
24 anything?

25 A. No.

1 N. Mucciarone

2 Q. Can you recall anything else
3 that you said at that moment?

4 A. Not at the moment, no.

5 Q. Can you recall anything else
6 that he said?

7 A. No.

8 Q. Other than the touching that
9 you've just described, did he touch you
10 anywhere else?

11 A. Not that I can recall, no.

12 Q. You eventually were able to
13 shove him away?

14 A. Correct.

15 Q. What happened at that moment?

16 A. I turned around and I went back
17 into the bar.

18 Q. Did you walk or run?

19 A. I think I maybe walked quickly,
20 yeah.

21 Q. Did he call after you?

22 A. Not that I remember, no.

23 Q. Did you go immediately back
24 inside the bar?

25 A. Yes.

1 N. Mucciarone

2 his comments throughout the night could
3 lead me to believe that was a potential,
4 but at the moment that I walked outside,
5 after the apology, that really wasn't that
6 was on my mind.

7 Q. At the time you walked out you
8 did not anticipate that was going to
9 occur?

10 A. I did not, no.

11 Q. At the time you walked out of
12 the bar did you think there was a risk
13 that he was going to sexually assault you
14 when you walked out?

15 A. No.

16 Q. Had you believed that was a
17 risk, would you have walked out with him?

18 A. No.

19 Q. And you said you stayed for some
20 time and talked about what had occurred
21 with the other people?

22 A. Yes.

23 Q. And you mentioned also I think
24 that some people left prior to your
25 leaving?

1 N. Mucciarone

2 A. I don't think so, no.

3 Q. Are there any other
4 conversations you had that evening that
5 you can recall now?

6 A. No.

7 Q. Did you talk to your then
8 boyfriend, now husband at the time when
9 you got home?

10 A. Yes.

11 Q. Was he sleeping when you got
12 home?

13 A. Yes.

14 Q. Did you wake him up?

15 A. Yes.

16 Q. And what conversation did you
17 have?

18 A. I told him what happened. And I
19 cried and he cried and it was -- he was
20 mad and he was sad and there was a lot of
21 emotions.

22 Q. Did you ever consider asking him
23 to come and join you at either Rock and
24 Reilly or Pig 'N' Whistle?

25 A. No.

1 N. Mucciarone

2 Q. He offered to do that in one of
3 his text messages; right?

4 A. Yes.

5 Q. Why did you not take him up on
6 that?

7 A. He's very protective of me.
8 He's always the person that will say like
9 where are you, I don't want you to take a
10 cab home alone, I'm going to come there
11 and come home with you. Like it's very
12 sweet but it's a little bit overbearing at
13 times, as I'm sure you can imagine. And
14 it was a client event. I'm an adult. I
15 don't need my boyfriend to come pick me up
16 from a client event.

17 Q. And at the time that your
18 boyfriend made the offer to come and get
19 you, did you believe you were at risk of
20 being sexually assaulted?

21 A. No, I thought it was harassment
22 that I could handle.

23 Q. Do you know what time you went
24 to sleep that night?

25 A. Probably close to like 5:00 or

1 N. Mucciarone

2 5:30.

3 Q. Did you go to work the next day?

4 A. I did not.

5 Q. Had you been planning on taking
6 the day off anyhow?

7 A. I had told Nick after the
8 assault happened that I wasn't coming in
9 the next day and he said that was fine.

10 Q. Do you remember what time you
11 got up?

12 A. Probably like 8:00, around 8:00.

13 Q. Did you have any communication
14 with anyone from Initiative when you woke
15 up?

16 A. Not immediately, no.

17 Q. Did you have any communication
18 with anybody from Dr. Pepper Snapple Group
19 when you woke up?

20 A. Yes.

21 Q. What was that first
22 communication?

23 A. Elizabeth had texted me.

24 Q. What did she say in that text?

25 A. Sort of hey, girl, how are you

1 N. Mucciarone

2 doing, how was the rest of your night,
3 like -- I think she said was Justin -- did
4 Justin continue to be weird or something
5 along those lines.

6 Q. What did you -- did you respond
7 to her?

8 A. I did. I told her what had
9 happened, that my night ended with me
10 basically stiff-arming Justin to get him
11 away from me.

12 Q. What was her response, if any?

13 A. Something along the lines of oh,
14 my God, I'm so sorry, that sounds awful.

15 Q. At that point did you ask
16 Elizabeth to take any action in response
17 to Justin's conduct?

18 A. I did not.

19 Q. What was the next communication
20 you had with anybody from Dr. Pepper
21 Snapple Group that day?

22 A. I think the only person I had
23 talks to that day was Elizabeth from DPSG.

24 Q. Did you communicate through text
25 exclusively or did you also speak to her?

1 N. Mucciarone

2 What conversation did you have?

3 A. I told him I was feeling anxious
4 and uncomfortable and not -- I just felt
5 gross about the whole situation. And
6 after talking to Andrew, my husband, and
7 my dad, I had decided that I wanted to go
8 to HR.

9 Q. Did you go to work on
10 September 5?

11 A. The Tuesday? Yes.

12 Q. We established September 4 is
13 Labor Day; right?

14 A. Yeah.

15 Q. Did you go to work on
16 September 5, 2017?

17 A. Yes.

18 Q. What, if anything, did you do as
19 relates to concerns you had about Justin
20 Whitehead?

21 A. I sent an e-mail to HR and said
22 I wanted to speak to someone.

23 Q. Prior to sending that e-mail,
24 did you make any requests to talk to
25 anybody at Dr. Pepper Snapple Group about

1 N. Mucciarone

2 Whitehead's employment?

3 A. I don't recall.

4 Q. Did you understand that his
5 employment had been terminated based on
6 his conduct on August 29 and 30 towards
7 you?

8 A. That's what I gathered, yes.

9 Q. And do you know the date he was
10 fired?

11 A. I don't.

12 Q. Do you believe that Dr. Pepper
13 Snapple Group did the right thing in
14 firing Justin Whitehead for his conduct?

15 A. I do.

16 Q. Do you believe that Dr. Pepper
17 Snapple Group acted promptly to terminate
18 Justin Whitehead's employment after the
19 events of August 29 and 30, 2017?

20 A. I guess it depends on what you
21 mean by Dr. Pepper Snapple Group. If you
22 mean HR after learning about it, yes.

23 Q. Well, Dr. Pepper Snapple Group
24 was Justin Whitehead's employer; right?

25 A. Correct.

1 N. Mucciarone

2 MR. RAFKIN: Objection to the
3 extent that it calls for a legal
4 conclusion.

5 You can answer.

6 Q. You can answer.

7 A. No.

8 Q. Do you have any reason to
9 believe that Dr. Pepper Snapple Group
10 wanted Justin Whitehead to sexually
11 assault you?

12 A. No.

13 Q. Do you have any reason to
14 believe that Dr. Pepper Snapple Group knew
15 that Justin Whitehead might have a
16 propensity to harass or assault someone?

17 A. I don't know one way or the
18 other.

19 Q. Had you ever heard that Justin
20 Whitehead had sexually harassed someone in
21 the past?

22 A. No.

23 Q. Did you ever hear that Justin
24 Whitehead had sexually assaulted someone
25 in the past?

1 N. Mucciarone

2 A. No.

3 Q. Are you aware of Justin
4 Whitehead having any kind of a criminal
5 record?

6 A. Not that I'm aware of.

7 Q. Before the evening of August 29
8 and 30, 2017, had you ever raised any
9 concerns about Justin Whitehead to anybody
10 at Dr. Pepper Snapple Group?

11 A. No.

12 Q. Did you have any concerns about
13 him prior to that evening?

14 A. I didn't know him so no.

15 Q. Following September 4, 2017, did
16 you continue to work on the Dr. Pepper
17 Snapple Group account?

18 A. Yes.

19 Q. For how long did that continue?

20 A. About a month and a half.

21 Q. During that period of time, did
22 you have any work-related conversations or
23 communications with Justin Whitehead?

24 A. No.

25 Q. During that month and a half or

1 N. Mucciarone

2 Q. When you wrote your text, you
3 said, "literally do not know what I would
4 have done if you and Tas weren't there
5 last night."

6 What did you mean by that?

7 A. I meant that I was thankful that
8 I had people to talk to at the event.
9 They were expressing that his behavior was
10 inappropriate and I sort of felt like I
11 had girlfriends with me, in a sense.

12 Q. Looking a little further into
13 the document there's a page that has
14 DPS Bates number 14 on it.

15 Do you see that?

16 A. Yes.

17 Q. At the top third or so of the
18 page there's a statement from Elizabeth
19 Eaton that says, "honestly though I'm here
20 for you and will always have your back, so
21 if you feel uncomfortable or like it needs
22 to be addressed further for any reason,
23 please tell me. Just want you to know I
24 don't want to minimize it at all. Just
25 want to support you in any way I can."

1 N. Mucciarone

2 What was your reaction to that
3 statement?

4 A. Honestly, at this point I still
5 was trying to process what happened.
6 Elizabeth and I had a professional
7 relationship. We were not close. This is
8 the only time that we had ever texted. I
9 felt glad that she supported me but also
10 felt awkward and uncomfortable about the
11 entire situation, so that was mostly my
12 reaction.

13 Q. Looking at the next page bearing
14 Bates number DPS 15, near the bottom of
15 the page you say, "I don't think I want to
16 address it further. I just want to sort
17 of make sure I never have to be in a
18 situation where I have to have meetings
19 with him or work with him in any way so
20 might just talk to Linda about that," and
21 that statement goes from page fifteen to
22 sixteen.

23 Do you see that?

24 A. I do.

25 Q. At that point were you of the

1 N. Mucciarone

2 mindset that you did not want Dr. Pepper
3 to do anything further relating to Justin?

4 A. At that moment again I was still
5 processing. I still was in a little bit
6 of shock about what happened. I didn't
7 know what to do. I felt uncomfortable.
8 As I said earlier, I liked my team, I
9 liked the situation that we had on the
10 team, I liked my clients, for the most
11 part, and I just -- I kind of felt a
12 little lost, to be honest.

13 Q. So at that point you were
14 communicating to Elizabeth Eaton that you
15 did not want her to do anything further
16 about it?

17 A. Correct.

18 Q. And the next exchange or rather
19 the next text is from Elizabeth to you;
20 right?

21 A. Yes.

22 Q. And in that exchange Elizabeth
23 offers to talk to Eric but only if you
24 want me to.

25 Do you see that?

1 N. Mucciarone

2 A. I do.

3 Q. Did you want her to report what
4 had occurred to her boss at that point?

5 A. At the time I didn't know what I
6 wanted. I again just felt confused and
7 lost and part of me just wanted somebody
8 to do the right thing without me having to
9 tell them to do the right thing.

10 Q. So do you know when she first
11 attempted to talk to Eric about the
12 situation?

13 A. I don't know.

14 Q. Do you know if she --

15 MS. ALMON: Well, let me strike
16 that.

17 Q. Did you ever say please talk to
18 your boss about this?

19 A. I did not.

20 Q. Do you know if she did it
21 anyhow?

22 A. I believe she had a conversation
23 with him. I don't know what the
24 conversation was, I don't know what the
25 extent was, but I believe that she did

1 N. Mucciarone

2 A. Correct, yes.

3 Q. Looking at page 278, there's a
4 question, "any word from Seth."

5 Is that from Aggie?

6 A. Probably.

7 Q. Well, were Aggie and Seth in
8 communication?

9 A. No, so it was me.

10 Q. And then the next -- well, "any
11 word from Seth" would have been a question
12 from Aggie to you?

13 A. Correct.

14 Q. And then the next line is a
15 response from you?

16 A. Correct.

17 Q. And it says, "yeah, he told me I
18 can tell Lupes," and then it goes on.

19 Who's Lupes?

20 A. Guadalupe. We called her Lupes
21 or G or anything but Guadalupe basically.

22 MR. RAFKIN: The part where she
23 says she hates my advice is probably
24 accurate.

25 MS. ALMON: I was going to leave

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N. Mucciarone

further questions. Thank you.

THE VIDEOGRAPHER: That's it?

We are going off the record at
4:15 p.m., and this concludes today's
testimony given by Nancy Mucciarone
taken -- the total number of media
units used is four and it will be
retained by Veritext.

(TIME NOTED: 4:15 p.m.)

(Signature of witness)

Subscribed and sworn to
before me this _____
day of _____,
2019.

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of February, 2019.



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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X
 NANCY MUCCIARONE,

 Plaintiff,

 v.

 INITIATIVE, INC., INTERPUBLIC GROUP, DR
 PEPPER SNAPPLE GROUP, INC. and JUSTIN
 WHITEHEAD ,

 Defendants.
 -----X

18-cv-00567 (PKC)

ERRATA SHEET

PAGE	LINE	CHANGE	REASON
289	14	"meet you here"	
303	15	cork to fork	
312	18-19	push to pushing; and to to	
319	12	Wednesday morning	
334	21	nothing to something	
368	16-17	big block of text on a slide that says Nancy's upda	
369	24	me to my	
371	24	me to my	
382	15	move to matt said something	
397	25	not to not do my work	
420	5	him to them	
425	11	about to above	

Nancy Muscia

Sworn to before me this

3 day of April, 2019

Notary Public

Notary Public

WULFF IVETTE
NOTARY PUBLIC, STATE OF NEW YORK
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QUALIFIED IN STATE OF NEW YORK
COMMISSION EXPIRES 12/23/2022

